



POLICE DEPARTMENT

March 21, 2023

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2021-23691
Captain Daniel Bianco	:	
Tax Registry No. 942998	:	
43 rd Precinct	:	

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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Paul M. Gamble
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU:

Brian Arthur, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For the Respondent:

Marissa Gillespie, Esq.
Karasyk & Moschella, LLP
233 Broadway, Suite 2340
New York, NY 10279

To:

HONORABLE KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

1. Captain (*then Lieutenant*) Daniel Bianco, on or about June 4, 2019, at approximately 2205 hours, while assigned to the 44th Precinct and on duty in the vicinity of 1565 Townsend Avenue, Bronx County, wrongfully used force, in that he punched Person A [REDACTED] in the face without police necessity.

P.G. 221-02, Page 2, Prohibition 11

USE OF FORCE

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on January 31, 2023. Respondent, through his counsel, entered a plea of Not Guilty to the charged misconduct. The CCRB called CCRB Investigator, Matt Chaves, as a witness. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, the Tribunal finds Respondent Not Guilty.

ANALYSIS

The following is a summary of the facts that are not in dispute.

On June 4, 2019, Respondent was assigned to the 44th Precinct as the Special Operations lieutenant. On that date, he and Police Officer Sheridan were looking for an opportunity to apprehend a suspect, identified as "Person B" [REDACTED] in the slashing of the tires on a marked police vehicle several days before (T. 64-65, 88). Earlier in the day, Respondent observed the suspect operating a motorized scooter but elected not to attempt an apprehension (T. 66).

At approximately 2200 hours, Respondent received information that the suspect was near 1565 Townsend Avenue (*Id.*). He left the precinct, accompanied by Police Officers Sheridan and Garcia, with the intention of making an arrest (T. 66-67). The three police officers arrived at the location approximately five minutes later, where they observed a large group of people

(*Id.*). Among the individuals that Respondent observed at that location was Guzman, the suspect that he had been looking for earlier in the day (T. 67-68).

The police vehicle double-parked and Sheridan emerged from the driver's seat to move toward the suspect, walking between two parked cars (T. 68). Respondent, who had been seated in the front passenger seat, stepped out of the police vehicle, walked behind it and stepped onto the sidewalk (T. 69). He then looked in the direction that he had seen the suspect before he had emerged from the police vehicle and observed Sheridan in a physical confrontation with a male, later identified as Person A (T. 69). Respondent was unaware of how Sheridan and Person A came to be involved in the confrontation (T. 89-90). Respondent then took certain actions, which are disputed.

The following is a summary of the relevant evidence offered at the trial.

Video Evidence

CCRB Ex. 1: [REDACTED] Video

The CCRB obtained a video from a civilian witness¹ from June 4, 2019, showing the encounter between Person A and multiple officers, including Respondent. The video, which is 49 seconds long, starts after Respondent has already approached Person A Officer Sheridan and Officer Garcia.

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|-------------|--|
| 00:00-00:02 | Respondent is seen swinging his right arm, punching Person A in the head, as Sheridan and Garcia are grappling with Person A. The three officers are on the sidewalk, facing Person A with Person A's back to the wall of a building as he faces them. |
| 00:02-00:10 | Respondent bends down and wraps his arms around Person A's legs, lifting him off his feet. Sheridan and Garcia then push Person A's shoulders backwards and he falls to the ground with Respondent still holding his legs. |

¹ CCRB identified the video as having been provided by "Person C."

- 00:11-00:18 Respondent, Sheridan and Garcia struggle with Person A while he is on the ground. Garcia then stands up, leaving Respondent and Sheridan crouching over Person A as he lies on his left side.
- 00:19-00:29 Sheridan and Respondent continue to struggle with Person A as he appears to be lying on his back. Respondent pulls Person A's shoulders toward him and twists his torso, enabling Sheridan attempts to handcuff him from the rear, while Person A is bent forward with his legs on the sidewalk.
- 00:20-00:49 Respondent stands up, pulls a shield from beneath his t-shirt and shouts at the crowd to "Clear it out . . . move . . . walk!" Sheridan has physical control of Person A who is handcuffed and once again lying on his left side.

CCRB Ex. 3: Respondent's Body-Worn Camera

The video recording from Respondent's body-worn camera is 58 seconds long. At the beginning of the video, he is in the passenger seat of the police vehicle. The video depicts the following:

- 22:03:38-22:03:58 Respondent's hand is obstructing the camera².
- 22:03:59 Respondent begins to exit the vehicle³.
- 22:04:05-22:04:08 Respondent first approaches the sidewalk. Sheridan and Person A are engaged in a physical altercation and are moving towards the brick wall. Sheridan is in a bright blue shirt and Person A is wearing a grey sweatshirt and black pants. Garcia is standing approximately two feet behind Sheridan.
- 22:04:11-22:04:12 Respondent approaches the duo, grabs Person A's sweatshirt with his right hand, and grabs Person A's arm with his left hand, while saying, "Get on the ground, get on the ground"; Respondent's right hand then shifts to the lower part of Person A's arm. Person A is asking, "What I did do?"
- 22:04:15-22:04:16 Garcia is standing in front of Respondent, facing him, with handcuffs in his right hand. At the same time, Respondent's right hand is holding Person A's wrist.

² Respondent is not charged with obstructing or interfering with his body-worn camera.

³ At trial, Respondent indicated that Sheridan exited the vehicle some time before him (T. 132). According to video obtained from Sheridan's body-worn camera, in evidence, Sheridan exits the vehicle at 22:03:59: the same time Respondent exited his vehicle (CCRB Ex. 6).

22:04:21-22:04:29 Respondent, holding handcuffs in his right hand, and holding Person A with his left hand, attempts to handcuff Person A but is unsuccessful; he then begins wrestling with him.

22:04:30-22:04:31 Person A is brought to the ground.

CCRB Ex. 4: Demonstrative Evidence

Matthew Chaves, a CCRB investigator, testified that he created CCRB Exhibit 4 by using a video program called “Axon Investigates” to combine the video files in CCRB Exhibits 1 and 3 (T. 28-29). Using the program, Chaves was able to identify a single frame, from each video, which recorded the moment Person A was brought to the ground. Once he identified a match of this event in both videos, he was able to create a synchronized, side-by-side visual depiction of CCRB Exhibits 1 and 3 as they ran in real time (T. 29-30).

A review of CCRB Exhibit 4 reveals that Respondent punched Person A at 22:04:21 on CCRB Exhibit 3, thus punching him 48 seconds into his body-worn camera recording.

CCRB Exhibits 1A, 2, 4, 5, 6 and 6A were admitted into evidence by stipulation. CCRB Exhibit 1A is a half-speed version of CCRB Exhibit 1. CCRB Exhibit 5 is a version of CCRB Exhibit 4, without the audio portion. CCRB Exhibits 6 and 6A are recordings from Sheridan’s body-worn camera. These exhibits were largely duplicative of each other and contained no probative value beyond that which was present in CCRB Exhibits 1, 3 and 4.

Person A's *Statement*

Person A provided a sworn statement to the CCRB on December 26, 2019 (CCRB Ex. 7, 7A). In his statement, he asserted that on June 4, 2019, he was standing speaking to someone seated in a double-parked car, when two police officers drove up in a Toyota Camry, exited their car and “grabbed him,” bringing him from the street to the sidewalk, while each had a grip on his hands (CCRB Ex. 7A at 4, 9). Person A stated that he asked the police officers why he

was being arrested; when they did not respond, he refused to bring his hands behind his back to be handcuffed (*Id.* at 4-5, 13-14).

Person A stated that he noticed Respondent walk toward him and then punch him once (*Id.* at 5, 16, 17, 36, 43). He indicated that the punch hit the “curve” of his nose and at that point,

Person A put his head down; the police officers then “slammed” him to the ground (*Id.*, 17-18).

Person A claimed that the police officers “touched me with they [sic] feet like that stepping on me” and “They were stepping on me, all over me bro” (*Id.* at 5, 18, 19).

Once **Person A** was handcuffed, he was brought to the Toyota Camry by Respondent; he claimed that as they rode to the precinct, Respondent told him, “This is what you get for being arrested” and “this is what you get” (CCRB Ex. 7A at 24, 26).

During the CCRB interview, the investigator played the videos of the incident **Person A** had brought with him to the interview. He asked **Person A** whether he recognized the uniformed police officer (Garcia) in CCRB Exhibit 1; **Person A** answered that he did but it was the two plainclothes officers who approached him and that Garcia approached him after they did (*Id.* at 37-38, 40).

Person A told the CCRB investigator that he was never provided medical attention; when the investigator asked him whether he had requested it, **Person A** replied, “Do we gotta [sic] ask?” (*Id.* at 22). **Person A** sought medical treatment at Bronx-Lebanon Hospital Center on June 6, 2019, complaining of “left arm and lower back pain with abrasion” (Resp. Ex. C at 5). The physical examination detailed abrasions to **Person A's** left elbow and left lower back (*Id.* at 8). **Person A** told the examining medical personnel that he had “got into a fight with cops,” and had been “slammed down to the ground” (*Id.* at 10).

Person A along with others, filed a civil action against the Department and the City of New York on August 3, 2020, for various torts, as well as civil rights violations, allegedly arising from this incident (Resp. Ex. B).

Respondent's testimony:

Respondent testified that once he observed Sheridan engaged in a physical confrontation with Person A he went to assist him (T. 69, 91). He characterized the confrontation as "Officer Sheridan in a tussle with Person A and Person A is violently grappling with my officer, pushing, shoving . . ." (T. 69). Respondent testified that he tried to "gain custody and control of one of the arms, the arm that is closer to my arm, which I believe is his right hand, arm, and I am giving him direction to get down to the ground, because that's how violent the tussle was, the punching, the shoving of my officer" (*Id.*).

Respondent testified that he had control of Person A's right hand for a moment and attempted to place handcuffs on it, but was unable to do so because Person A grabbed at Respondent's handcuffs with the same hand Respondent was attempting to restrain, causing Respondent to drop them to the ground. He retrieved his handcuffs and continued struggling with Person A whom he testified was "tussling, pushing, shoving, inadvertently [sic] throwing elbows up" (T. 70). Respondent testified further that Person A was able to reverse his grip and grab Respondent's right hand with his right hand (T. 70-71). He then testified that Person A had "custody and control over [his] left arm, and it's at this point . . . that I'm scared. I have -- I have a crowd behind me, and they're yelling profanity at us, and we can't get this guy in custody" (T. 72).

Respondent testified further that Person A "was incredibly strong for his size; I don't think any of us were expecting that. He was a very strong individual. We have a hostile crowd not too

far from us at the location where officers previously responded, and had a hostile crowd, and they were responding to shots fired at the location. Individuals did prevent them from going into the building to investigate it. At this point in time, I'm struggling with an individual that poses as a threat to me, threatening Officer Sheridan. We could not get custody and control of him. Then I have an entire crowd that I can't see for the most part of my fight, and they are yelling profanity. They're telling us that they're going to fuck us up" (T. 76-77).

Respondent testified that he leaned forward and put his shoulder to Person A's shoulder in an attempt to break Person A's grip on Respondent's arm; he also tried to break Person A's grip by putting pressure on his thumb and rolling it (T. 78). He testified further that he saw Sheridan on the other side of Person A's body but did not know how much control he had. At that point, Respondent, concerned that Person A "could take something off on my equipment, or toss me to the ground," struck him once in the face "trying to take the bite [sic] out" (T. 78-79).

Respondent testified that he believed the punch was reasonable because "we had been there for a while and I did not feel that . . . we would be able to apprehend him." He explained further that the purpose of the punch was "to get him to stop fighting and enable me to cuff him" (T. 79).

Respondent conceded on cross-examination that Garcia was present during his confrontation with Person A but that he was only aware, at that time, of Sheridan's presence (T. 96). Respondent conceded further that Person A did not attempt to punch either him, or the other officers, at any time during the interaction (T. 101).

Credibility

I credit the testimony of Matthew Chaves in his role as an investigator and evidence custodian. He testified candidly to the manner in which he created demonstrative evidence; the

Tribunal takes no measure of the inherently conclusory nature of the CCRB Exhibit 4 but accepts it as an aid to the Tribunal in support of their case.

I find Person A's hearsay statement to have limited probative value. In the statement, Person A does admit that he did not offer his hands to be handcuffed. His assertion that he was punched is corroborated by the video evidence in CCRB Exhibit 1 and by Respondent's in-court admission. His other claim that he was kicked by the police officers does not appear to be corroborated by any other evidence. Person A's lack of communication with CCRB as they attempted to prepare for trial, his decision not to appear to testify under oath and his filing of a civil action against the City of New York are all factors weighing against his veracity.

I had the opportunity to observe Respondent's demeanor as he testified at this trial; based upon all of the surrounding circumstances, I credit his testimony as candid and forthcoming. While he is an interested party in this proceeding, he testified in a manner that sought to invite the Tribunal's attention to various pieces of evidence, which, in his view, informed his decisions and justified his actions. I do not find that he attempted to do so with any intent to mislead the Tribunal.

Specification 1: Wrongful Use of Force

I find that CCRB has failed to meet its burden of proof by a preponderance of the relevant, credible evidence that Respondent wrongfully used force against Person A on June 4, 2019, without police necessity. Based upon the credible evidence in the record, I find that there was police necessity for Respondent's single punch to Person A's face.

At the outset, it is important to note that there is no evidence in the record that Person A was suspected of committing any crime at the time he encountered Respondent and Sheridan. Furthermore, there is no evidence in the record of what led up to Police Officer Sheridan

becoming involved with Person A. There is no dispute that Person A was not [REDACTED], the person suspected of slashing the tires of Department vehicles several days earlier. While there is similarly no dispute that Person A was placed under arrest after the altercation, there is no evidence of what charge Person A was arrested on or the disposition of any such charge.

The issue of whether or not Respondent reasonably believed that Person A had committed a crime, or was in the process of committing a crime, is not before the Tribunal. CCRB has not charged Respondent with stopping Person A without lawful authority.

Person A admitted in his hearsay statement that he did not submit to being handcuffed; the video evidence and Respondent's credible testimony corroborate this admission. I find that Respondent approached Person A intending to assist Sheridan and Garcia in bringing him under their physical control. This mindset is unassailable; it is consistent with the training and culture of this Department for Respondent, as a supervisor in the field, to come to the aid of fellow Members of Service.

I further find that Respondent's perception of the environment and Person A's conduct to have been reasonable under the circumstances. As noted above in the credibility analysis, I credit Respondent with candidly explaining his mindset at the time of this incident.

He described the crowd he encountered as "hostile" in his trial testimony. While that term is subject to interpretation, the objective evidence supports a finding that they did not appear to be supportive of the police action being undertaken in their presence. Respondent testified that he was aware of police officers who had responded to the same location earlier that day in response to a "shots fired" call and were not allowed to enter the location by a crowd. I find that this anecdotal information factored into his perception of the persons who were present when he went to that location several hours later.

CCRB Exhibit 1 establishes that members of the crowd did approach the police officers while recording their interaction with Person A coming as close as four to six feet from the participants.

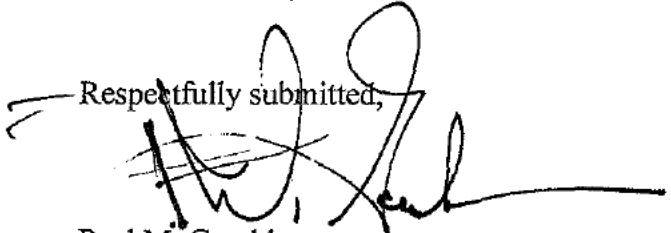
Respondent testified credibly that when he first engaged with Person A he had control of Person A's wrist but that during the struggle, Person A gained physical control of Respondent's wrist. He testified that he attempted to break Person A's grip on his wrist by twisting it away, and even resorted to using his shoulder to lean into Person A to gain some leverage, but that these efforts were unsuccessful. Respondent also testified that the struggle was such that he lost control of his handcuffs, dropping them to the sidewalk, which was corroborated by his body-worn camera video. He testified he then threw a punch to Person A's face in an attempt to dissuade him from struggling further.

This Tribunal has previously found that, in limited circumstances, a single punch to establish physical control of a suspect is not misconduct (*Disciplinary Case No. 2018-18672*, [Nov. 20, 2019]; *Disciplinary Case No. 2016-16666* [Oct. 16, 2017]; *Disciplinary Case No. 2015-14479* [Dec. 8, 2016]).

I find that due to the length of the encounter; Respondent's unsuccessful attempts to regain control of his own wrists while attempting to place Person A's wrists in handcuffs; the difficulty three police officers had in placing a single suspect under arrest; and the presence of a crowd, some of whom approached to within four to six feet of Respondent and his brother officers, Respondent's decision to throw a single punch to Person A's face in order to deter his further resistance was justified.

Based upon the foregoing, I find Respondent Not Guilty of Specification 1.

Respectfully submitted,


Paul M. Gamble
Assistant Deputy Commissioner Trials

APPROVED

SEP 21 2023

EDWARD A. CABAN
POLICE COMMISSIONER